Supreme Court, U.S.
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No 98 -

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1998

Marie-Thérèse Assa'ad-Faltas, MD, MPH
[hereinafter "Dr. Faltas"],

Petitioner,

v.

The University of South Carolina
[hereinafter "USC"], *et al.*

Respondents.

and

Marie-Thérèse Assa'ad-Faltas, MD, MPH
[hereinafter "Dr. Faltas"],

Petitioner,

v.

The Attorney General of Virginia
for the Commonwealth of Virginia; *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

UNIFIED PETITION FOR A WRIT OF CERTIORARI
AND APPENDIX THERETO

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QUESTIONS PRESENTED

1. Does Title VII prohibit *quid-pro-quo* discrimination by religion as it does with sex?

2. Does the crime-fraud-*or-tort* exception pierce the attorney-client privilege and render an attorney liable to a non-client if he advises a client to violate Title VII to the non-client's damage?

3. In a Title VII case, is the employer concluded by its own internal review process if such process finds no performance reason for the adverse employment action against the employee?

4. Do this Court's holdings in *Faragher v. Boca Raton* and *Burlington Industries v. Ellerth*, 66 LW 4634 and 4643 (1998), prohibit the employer from taking the employee's demand for safeguards against recurrence of the Title VII violations as a rejection of an offer of reinstatement?

5. If the answer to questions 3 and 4 above is positive, does this Court's holding in *McKennon v. Nashville Banner*, 63 LW 4105, 115 S.Ct. 879 (1995), limit trial, and perforce discovery, in a case as here presented to the issue of damages, deeming liability established as a matter of law?

6. Since education is compelling thought, and educational testing is compelling speech, can states operate universities as their *alter egos* without violating the First Amendment that prohibits government from compelling speech no matter how "correct" or salubrious that speech is?

7. Does the Republican Form of Government, guaranteed to each state under Title IV, Section 4, of the Constitution of the United States, prohibit a state attorney general from *totally* abdicating to a private lawyer the determination of what the state's litigation position should be in civil suits?

8. Do Article III of the Constitution of the United States and this Court's unanimous holdings in *Mathews v. Weber*, 423 U.S. 261 (1976), and *Gomez v. U.S.*, 490 U.S. 858(1989), require those United States Courts of Appeals that decide to *totally* abdicate the adjudication of certain appeals to their Office of Staff Counsel to first obtain the consent of the parties to the appeal and allow them to object to the Office of the Staff Counsel's proposed dispositions of such appeals?

9. Do mere acts of arguing that the answers to questions 2 and 7 above should be positive and suggesting early settlement negotiations warrant Rule 11 sanctions on a plaintiff or her lawyer?

List of Parties to this Petition

Petitioner: Marie-Thérèse Assa'ad-Faltas, MD, MPH [hereinafter "Dr. Faltas"]

Respondents: The University of South Carolina [hereinafter "USC"] and its Board of Trustees in its corporate capacity; John Palms and James Moeser both individually and officially as USC President and Provost, respectively; Edward Floyd and Mark Buyck officially as chairs of USC's Board of Trustees and its Academic Affairs Committee respectively; and Thomas Stepp individually and as Secretary of USC's Board of Trustees; Alton McCoy, Edward Vaughn and Margaret Stillwell officially as USC's Internal Auditor and South Carolina auditors, respectively; South Carolina Department of Health and Environmental Control [hereinafter "DHEC"]; Douglass Bryan and Foster Young officially as DHEC Commissioner and Deputy Commissioner, respectively; The Attorney General of Virginia for the Commonwealth of Virginia; Carol Nance; James Padget; Robert Ball; Patrick Barrissi; Judy Weeks; Russ McKinney; Walter Parham; Clifford Scott; J. O'Neil Humphries; Caroline Strobel; Marsha Welsh; and Laurence Dark, each both individually and officially; James Ebersole; Ernest P. McCutcheon; Joan M. Altekruse; Laura Bird; Eric Brenner; James Sears, Bobby Gist; David Sheridan; Ernest Altekruse; and Richard Creswick, in their individual capacities; The Lawfirm of Nexsen, Pruet, Jacobs & Pollard [hereinafter NPJP], in its corporate capacity; and Victoria Eslinger; Susan McWilliams; John Trussell; and Edward Turbeville, in their individual capacities, and other unknown persons, in their individualcapacities.

Upon Petitioner's information and belief, none of the parties is a publicly traded corporation.

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Nor are there any procedural problems with
Petitioner's standing to raise the questions herein.

II. ON THE STATUTORY QUESTIONS.

The decisions below raise important issues on Title VII
religious discrimination and retaliation cases.

III. ON THE CONSTITUTIONAL QUESTIONS.

On question 6, there are conflicts among the circuits
and among this Court's various holdings and dicta.
Absent a definitive, widely applicable, holding
from this Court, the circuits' paths diverge.
Little is more unpredictable than a court's decision
on sovereign immunity for a state university.

On questions 6 and 7, novel constitutional questions are posed.

On question 8, current practices in lower courts amount to
a far enough departure from the accepted course of judicial
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Petitioner prays this Court to issue its writ to review these cases.

Opinions Below and Basis of this Court's Jurisdiction

In July and August 1996, U.S. District Judge Joseph F. Anderson, Jr., (D.S.C.) dismissed Petitioner's two cases in their entirety with prejudice. In the second case, he had awarded, and refused to reconsider, Rule 11 sanctions against her in favor of Respondent Eslinger and her collaborators. Shortly thereafter, he disqualified himself from all cases involving USC and, eventually, from all matters involving Petitioner herself. About that time, Petitioner obtained letters written on 28 October 1993 by Respondent Eslinger (A26-A31) and promptly used them in a consolidated Rule 60(b) motion in both cases. That motion was stamped "DENIED" on 17 January 1997 by U.S. District Judge Dennis Shedd, to whom the cases had been reassigned (A12).

Petitioner timely appealed the judgments and the denials of the Rule 60(b) motion. The U.S. Court of Appeals for the Fourth Circuit deferred consideration of consolidation of both cases, eventually denied consolidation as moot after the cases had been briefed separately, and affirmed by summary unpublished *per curiam* opinion in the first case (16 November 1998) and in the second case (6 October 1998) wherein it also denied a timely petition for rehearing (23 November 1998). The judgments and orders of the Court of Appeals and orders of the District Court are in Appendices A1-12 hereto.

On 8 March 1999, the Honorable Chief Justice of the United States granted Petitioner an extension of time to and including 16 and 19 March 1999 under applications ## A-594 and 595 in the first and second cases respectively. For judicial economy, both judgments of the court of appeals are sought to be reviewed through this petition per Supreme Court Rule 12.4, which provides in pertinent part:

> When two or more judgments are sought to be reviewed on a writ of certiorari to the same court and involve identical or closely related questions, a single petition for a writ of certiorari covering all the judgments suffices.

Jurisdiction of this Court over this timely unified petition is invoked under 28 U.S.C. §1254(1).

Constitutional and Statutory Provisions Involved

Article III, Section 1, of the U.S. Constitution provides:

> The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Article IV, Section 4, of the U.S. Constitution provides:

> The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

The First Amendment to the U.S. Constitution provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Title VII of the Civil Rights Act of 1964, as Amended in 1991, 42 U.S.C. §§2000e-2 and 2000e-3 provide in pertinent parts, respectively:

> (a) It shall be an unlawful employment practice for an employer
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin.
>
> ****************
>
> (m) Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice even though other factors also motivated the practice.

****

(a) It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

Statement of the Case

Petitioner is a physician and surgeon (M.D.) and Master of Public Health (M.P.H.) of Egyptian National origin, Coptic race, and membership in both the Copt Catholic and Orthodox Churches.

Having first come to the U.S. as a Fulbright Scholar in 1979, she experienced disabling outcomes of a surgery performed on her and employment difficulties where she always proved ahead of her time medically (in refusing to work under occupational hazards that later exploded) and legally (in rejecting acts and words of a supervisor of a nature this Court later held amounted to sexual harassment). Those experiences relegated her to seeking employment far below her qualifications and talents. (A13-14, A16-17) The latest of those was a non-tenure track faculty position in *the* least competitive specialty of Medicine (Preventive Medicine) in one of *the* least competitive medical schools in the U.S. (USC's). *Id.* Throughout 1992 and the first quarter of 1993, Dr. Faltas had invariably excellent performance evaluations and was promoted. But in January 1993, Respondent Joan Altekruse (then a tenured senior faculty member on the verge of retirement) organized, and pressured her to attend the monthly meetings of, a group called "Women of Faith and Spirit" which Dr. Faltas perceived as dedicated to glorifying feminism and lesbianism and to bashing the Bible as a concoction of male chauvinist pigs. (A15)

Dr. Faltas left the 25 March 1993 meeting of that group, telling Altekruse that she wanted none of the group or anyone associated with it. Altekruse's immediate response mentioned "reprisals" (A15-16).

Altekruse, who was not Dr. Faltas' supervisor, had served on the search committee that had installed then-incumbent Provost Moser and had, years earlier, hired the two other tenured faculty members in USC's Division of Preventive Medicine. These connections enabled her to convene a meeting that summarily demoted Dr. Faltas and demanded that she single-handedly have her Healthcare and Welfare Restructuring Proposal "passed as a bill in the United States Congress by June 1993" or forfeit all credit for her two years' work, and that she undergo immediate mental health examination because her having taken one day off for a cold somehow proved a rapidly deteriorating mind. (A15-16, A17-20) When Dr. Faltas responded that President Clinton could not do what they were asking of her but that she would undergo any mental health examination to which Altekruse would submit herself too, she was suspended *without notice, cause or even an allegation of inadequate performance (A20).* Dr. Faltas appealed to USC School of Medicine's Dean who, after meeting with Altekruse's immediate supervisors and with USC's associate General Counsel, decided to lift Dr. Faltas' suspension. Altekruse then contacted Dr. Faltas' prior employers and was "advised" by Respondent Virginia Assistant Attorney General Nance to pretend that Dr. Faltas had concealed her past employment and to contact the Immigration and Naturalization Service (INS) to render her "technically unemployable" which Altekruse did. On 9 June 1993, she procured a secret vote to dismiss Dr. Faltas based on a memorandum from Altekruse claiming that Dr. Faltas must be prevented from practicing her profession because she filed Title VII charges and because her religious views *"on sexual orientation and creationism"* (A18) antagonize people whose friendship Altekruse and her cohorts had cultivated (A20-22).

Dr. Faltas then appealed formally per contract. A panel of three USC medical professors convened on 3 September 1993, examined every word in the charges of dismissal and all proffered purported support thereof, and asked questions of Dr. Faltas (A22-23).

The panel found absence of support for the charges of dismissal and concluded **"unanimously"** that Dr. Faltas should **"be reinstated in good standing" (A23**) That was transmitted to the Dean and to the State Human Affairs Commission (SHAC), acting on behalf of EEOC, with whom Dr. Faltas had filed a timely charge of discrimination. SHAC wrote to USC suggesting that the matter be conciliated by reinstating Dr. Faltas with backpay and shielding her from future discrimination and retaliation by Altekruse and her two cohorts **(A23-25)**.

Learning of that, Altekruse and her two cohorts surreptitiously and illegally took Dr. Faltas' personnel files to the office of a private lawyer, Respondent Eslinger, of NPJP. On 28 October 1993, Eslinger wrote to them, with a copy to USC's General Counsel, that Dr. Faltas could be fired anyway, and, if Dr. Faltas sues, USC can use her past opposition to Title VII-prohibited conduct to poison the jury against her. Eslinger also strongly recommended that USC cause more INS problems for Dr. Faltas and pretend that Dr. Faltas' request for safeguards against recurrence of the discrimination is a rejection of an offer of reinstatement (which had never been extended to Dr. Faltas *by her employer*) (A26-31). On 8 November 1993, USC School of Medicine's Dean wrote Dr. Faltas a letter of termination *parroting Eslinger's language* **(A32).** SHAC immediately dumped Dr. Faltas' charge to EEOC which issued her a right-to-sue letter. Thereafter, USC hired SHAC's deputy commissioner, Respondent Gist (A25, A32). Dr. Faltas then filed the first case *pro se* in U.S. District Court (D.S.C.).

Several defendants claimed improper service; and the others filed Rule 12(b)(6) motions based on sovereign immunity and failure to make RICO, Title VII, and other claims. The motions were argued before a magistrate judge, in October 1994, and again before Judge Anderson, in March 1995, while discovery motions had been suspended pending the outcome of the motions to dismiss. Dr. Faltas preserved her position that higher education is not a constitutional function of government and that USC should not partake of the state's sovereign immunity. Judge Anderson refused to dismiss any of Dr. Faltas' non-RICO claims but held that USC enjoyed sovereign immunity on all non-Title VII claims.

He did dismiss, but without prejudice, some defendants who had claimed improper service. Dr. Faltas promptly filed the second case, by attorney Orin Briggs, against the latter defendants, adding to the new complaint such parties and plausible claims as were revealed through discovery in the first case[1]. (A33-34) The private lawyer's senior partner promptly wrote Mr. Briggs threatening a Rule 11 motion if all claims against the lawyers are not voluntarily withdrawn.

Dr. Faltas asked that no written response be made; but. Briggs' collegiality demanded that he write back that none of the claims are frivolous but he is open to early settlement talks. Rule 11 sanctions were still imposed under an unproven theory that the claims were made to "extort" a settlement. In each case, Respondents deposed Dr. Faltas for five days, in the presence of a magistrate or a special master, after obtaining from her about 100 interrogatory answers, 2,500 documents, and 15 tapes. Yet, Judge Anderson dismissed both cases, reasoning: (in his 11 and 19 July 1996 orders, at 7 and 42, and at 6, respectively) that:

> "To require the court to make any more detailed finding as to prejudice, that is, to identify what the defendants to not know, is in essence to require the court to prove a negative."
> the opposing party has been put to undue expense and has, nonetheless, been unable to gain *adequate information to prepare a defense* prior to the close of discovery, the case should be ended
> defendants have been put to incredible expense but have yet to pin down the basis of plaintiff's many broad allegations against them or to learn *the identity of witnesses known to plaintiff <u>who might have information helpful to the defense</u>*. [emphasis added]

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1 Discovery had revealed that South Carolina's Attorney General farms out wholesale all the state's civil cases to private lawyers and that Altekruse had lobbied to have Eslinger hired to defend USC, at state expense, against Dr. Faltas' civil suit. So, Dr. Faltas included a challenge to that scheme: only constitutional officers of the state, not private people, may decide the state's litigation position and since the scheme, allegedly operated negligently, injured her in by enabling a state institution to fire her at the behest of a private lawyer who stood to earn fees by defending the state on that firing.

Dr. Faltas tried in vain to have him consider that no facts or witnesses helpful to the Defense exist. She later briefed the Court of Appeals that, in a Title VII case, either the plaintiff's claims are meritorious, in which case the defendants will find nothing helpful to them in discovery, or the defenses are meritorious, in which case the defendants would know their defenses before litigation commences. The Court of Appeals did not address any of her arguments, but summarily ruled that "her demeanor" in her deposition in the first case, and her having fallen too tired/ill at 5:30 pm to continue the fifth day of her deposition in the second, warrant the sanction of dismissal.

Reasons to Grant the Writ (Summary)

I. IN GENERAL. The facts of this case are uncontested and are almost entirely told by documents (of which the most telling ones are appended hereto) of record in the lower courts. Nor are there any procedural problems with Petitioner's standing to raise the questions herein. Moreover, this Court could chose to grant *certiorari* on any one of the nine questions, on all nine of them, or on any combination of any two or more of them and still compose a coherent opinion that would restore justice to Petitioner and answer questions of immense constitutional and statutory importance.

II. ON THE STATUTORY QUESTIONS. The decisions below raise important issues on the principles and practice of adjudicating Title VII religious discrimination and retaliation cases.

III. ON THE CONSTITUTIONAL QUESTIONS. On Question 6, there is conflict among the circuits among this Court's holdings and dicta. Core constitutional question posed here were not addressed before. On Question 8, this Court's holdings in Article III cases suggest that current practices in lower courts amount to a far enough departure from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's supervisory power.

Reasons to Grant the Writ (On Questions 1-5)

The jurisprudence of religious discrimination in employment almost entirely overlooked the risk of *quid-pro-quo* religious harassment.

An employee's religious autonomy and dignity are as worthy of legal protection as her sexual autonomy and dignity. *Quid-pro-quo* religious harassment is rarely overt as an employer asking an employee to convert to a religion under penalty of discharge or demotion; but it could, and more often than recognized does, take a more subtle form of an employer or supervisor (very pleasantly) inviting a subordinate "to my church." It may be more detrimental to the work place than *quid pro quo* sexual harassment. Those who demand sexual favors know that they seek a wrong and may experience pangs of conscience if rejected. But one who invites another to a church assumes a degree of self-righteousness and may take a rejection of the invitation as proof of the rejector's bad judgment as to the best source of holiness and/or of indifference to holiness and integrity. And as in *quid pro quo* sexual harassment, where the employer or supervisor may reward with job benefits the subordinate who dispenses sexual favors, the employer or supervisor may, possibly subconsciously, trust and prefer the employee who comes to share a religious devotion.

But unlike hostile environment harassment, *quid pro quo* harassment may be directed at employees who do not profess any religion. Nor may the employee be able to accomplish the "visit" to another's place of religious practice with the religious detachment of a tourist in the Sistine Chapel or the Blue Mosque. *The invitation is not to an empty edifice but to a practice.* And in many religions, the mere act of listening to words critical of, or contrary to, one's religion is a sin. *Here, a physician with no performance or professional inadequacies whatsoever was fired and branded mentally ill solely because she refused to accept the religious views of a senior co-worker who had more leverage with the employer.*

Despite this Court's and Congress' careful jurisprudential development of Title VII, Title VII *litigation*'s risk/benefit ratio keeps it one of the least rewarding legal endeavors. In *Kremer v. Chemical Construction Corporation*, 456 U.S. 461 (1982), this Court gave preclusive effect *against the employee* to a state agency determination. Reason does not appear why, as here, the employer's own panel's determination should not have preclusive effect *against the employer.*

Nor does reason appear why when as here the uncontested documents show that the employer took impermissible motives into account, liability could not be deemed established as a matter of law. Such guidance by this Court would streamline Title VII cases below.

On Question 6

There is considerable tension within this Court's line of cases on whether state universities are *alter egos* of their respective states. Earlier, this Court often ruled that a university does not partake of its state's sovereign immunity; *e.g., Hopkins v. Clemson Agricultural College of South Carolina;* 221 U.S. 636 (1910); *Nevada v. Hall,* 440 U.S. 410 (1979); *Jefferson County Pharmaceutical Ass. v. Abbott Labs,* 460 U. S. 150 (1983); or deferred the question; *e.g., Arkansas v. Texas,* 346 U.S. 368 (1953). In other cases,*e.g.; Lake Country Estates v. Taboe Regional Planning Agency;* 440 U.S. 391 (1979), this Court had one inquiry: "does the agency exercise a slice of state power?"

Absent a definitive, widely applicable, holding from this Court, the circuits' paths diverge. Little is more unpredictable than a court's decision on sovereign immunity for a state university. The Third Circuit uses a nine-factor inquiry; *Blake v. Kline,* 612 F.2d 718 (3rd Cir. 1979), *cert. denied,* 447 U.S. 921 (1980); based on *Urbano v. Board of Managers,* 415 F.2d 247 (3rd Cir. 1969), *cert. denied,* 397 U.S. 948 (1970),.also adopted in *Hall v. Medical College of Ohio at Toledo,* 742 F.2d 299 (6th Cir. 1984). The Fourth Circuit uses a four-point analysis; *Ram Ditta v. Maryland Ntnl Capital Park Commission,* 822 F.2d 456 (4th Cir. 1987).The Tenth Circuit uses a two-pronged analysis; *Unified School District No. 480 v. Epperson,* 583 F.2d 118 (10th Cir. 1978) The Eleventh Circuit uses a tripartite test; *Harden v. Adams,* 760 F.2d 1158 (11th Cir 1985). The circuits generally proceed on a case-by-case basis, often giving determinative weight to the source of the funds from which a judgment against the university may be paid.But state courts often hold state agencies liable to civil suits irrespective of the source of funds; *e.g., Smith v. State,* 289 N.C. 303, 222 S.E.2d 412 (1976); and this Court struck down the source-of-funds-to-pay-judgment doctrine in its narrow holding in *Regents of the University of California v. John Doe,* 65 LW 4129 (1997).

And *Rosenberger v. Rector and Visitors of the University of Virginia*, 63 LW 4703 (1995), began by assuming without analysis that the "University of Virginia [is] an instrumentality of the Commonwealth for which it is named." A core constitutional inquiry "instrumentality for what?" was not made, presumably because the answer is obvious.

Yet education, noble and salubrious as it is, is but compelled thought and speech, albeit the type of thought and speech deemed by the academic consensus of the time to be correct[2]. First Amendment jurisprudence developed that government may not compel non-commercial speech no matter how correct or salubrious that speech is; *Hurley v. Irish-American GLABG of Boston*, 63 LW 4625 (1995).

Sates may no more operate instrumentalities dedicated to compelling thought and speech (under the noble title of higher education) than ones dedicated to unreasonably searching and seizing people's homes. Both functions are equally forbidden by the Constitution. A state has many arms, but none that may be used to pound ideas into adult heads. *Ideas must be left to set in under their own academic gravitas, not under the weight of the heavy arm of the state.*

The novelty and boldness of this argument should not be mistaken for a potential for mischief. *States would not have to divest themselves of their universities: only divest their universities of any state powers*, or cease subsidizing higher education: only cease subsidizing it with sovereign powers.[3] And the states' police power to license professionals, which is separate from higher education, is not affected: not all graduates are subject to state licensure; and not all who are subject to state licensure are graduates of state universities.

But it has broad significance and particular relevance here: Altekruse descended on Dr. Faltas with all the might and money of South Carolina to compel her to abandon her belief in "creationism." No private university could have afforded, or even authorized, such endeavor.

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2 This is true of evolving grammar of languages, of whether the Earth is flat, round or oval, of the best treatment of a disease , of types of subatomic particles, *etc.*

3 Government is always free to dispense financial aid to needy individuals without cloaking such individuals with government powers.

On Question 7

In *Richardson v. McKnight*, 65 LW 4579 (1997), this Court denied, on extra-constitutional grounds, sovereign immunity to a private contractor running a state prison. *A different, unavoidably constitutional, question is posed here. Unlike a monarchy, a republican form of government does not permit those elected or appointed to sovereign functions to bequeath attributes of sovereignty to a relative or even to an exquisitely qualified person.* Certain functions are deemed to require election to office or appointment by an elected Executive and confirmation by an elected Legislature.

South Carolina's scheme here challenged does not merely allow its attorney general to engage private help on a contractual basis to pursue a state litigation objective he has set. It allows him to *totally* abdicate to private lawyers the decision of whether the state should even enter into litigation and what the state's litigation position, not merely tactics, should be. Petitioner urges that litigation position is a state policy decision that cannot be privatized in a republican form of government.

On Question 8

In *M.L.B. v. S.L.J.*, 65 LW 4035 (1996), this Court reaffirmed its line of holdings that

> "When an appeal is afforded, ... it cannot be granted to some litigants and capriciously or arbitrarily denied to others without violating the Equal Protection Clause."

And *Hampton v. Mow Sun Wong*, 426 U.S. 88, 100 (1976), held:

> "The federal sovereign, like the states, must govern impartially."

Challenged here the Fourth Circuit's policy of assigning all *pro se* cases, from saints or from prisons, fee-paid or *in forma pauperis*, to its Office of the Staff Counsel. Its own Chief Judge Wilkinson, concurring in *Nasim v. Warden*, 64 F.3d 951, 958 (4th Cir. 1995), admitted:

> "[F]ederal courts resort to adjudicative systems in which decisions are handed down with **only the tangential involvement of Article III judges.** The use of staff counsel and other alternative modes of judicial decisionmaking has been increased ....

> Whenever claims are disposed of without the closest attention of the judges, **the legitimacy of the federal courts is at risk.**"

This Court's unanimous *Mathews v. Weber*, 423 U.S. 261 (1976), and *Gomez v. U.S.*, 490 U.S. 858 (1989), conditioned U.S. magistrates' participation in matters not specifically enumerated by statute on two factors: (1) consent of all parties and (2) constant knowledge of, and ability by any party to object to, everything the magistrate recommends to the district judge. Unlike U.S. magistrate judges, members of an office of staff counsel are not subject to any judicial code of conduct or to the mandate to disqualify themselves in situations listed in 28 U.S.C. §455. So, an entire class of appellants, defined only by their inability or unwillingness to hire a lawyer, find their cases adjudicated from A to Z by unknown non-Article III people who are not governed by any standard other than their probable desire to decrease their work load by summarily affirming all appeals "on the reasoning of the district court" and who may in fact have such other serious conflicts of interest that would have required the disqualification of a U.S. Justice, judge or magistrate judge.

That system produces results shocking to the conscience like those obtained here, where dismissal of a meritorious plaintiff's case is affirmed under the unthinkable notions that her mere "demeanor" in a deposition[4] one held in the presence of a magistrate judge (who could have held her for contempt of court if her demeanor had been offensive or compelled her to answer if she had refused or evaded) no less—"fully warrants" dismissal. Equally shocking is the affirmance of dismissal in the second case because Dr. Faltas could not *make* the special master excuse her *for the day* at 5:30 p.m. on the fifth day of her deposition—all after Judge Anderson wrote that he "does not doubt in the least that she was very tired [at that time]."

And most shocking is summary affirmance of Rule 11 sanctions without any fault within the claims that incurred them, thus making Dr. Faltas indebted to the very people who injured her.

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[4] "Demeanor" is firmly established as a criterion *for a fact finder, not a jurist of law*, to determine credibility of the witness, but nothing else.

While the current work overload of the federal judiciary is undeniable, the answer is not a de facto repeal of Article III of the Constitution of United States. At the very least, this Court could order the circuits' offices of staff counsel to disclose the name of the staff counsel member adjudicating the case, and give the parties to the appeal an opportunity to see, and object to, the opinion disposing of the appeal written by that staff counsel member before it is rubber-stamped by the panel of judges—a fraction of the requirements imposed on the substitution by a U.S. magistrate for one, not three, Article III judge.

It cannot be overemphasized that the work of the Office of Staff Counsel's member who writes an opinion for a panel of judges whose names appear on it *is nothing like the work of a Justice's or judge's law clerk in chambers.* Members of Offices of Staff Counsel are not selected by, or work in proximity to, the judges. Nor do they discuss the cases with the judges or even receive prior directions from the judges on what the disposition should be or on what grounds.

Taking Chief Judge Wilkinson at his public word, the involvement of judges is only "tangential," and that scheme undermines "the legitimacy of federal courts."

On Question 9

It is urgently necessary for this Court to set guidelines that would restrain the lower court's tendency to misuse their recently-expanded Rule 11 powers to stifle creativity in the Law.

Conclusion

WHEREFORE, the writ should be granted.

Respectfully submitted on 16 March 1999 by

Orin G. Briggs,
Attorney for Petitioner
P.O. Box B
Irmo, S.C. 29063
Telephone: (803) 957-4383

As the letters and memoranda mentioned in the Statement of the Case are essential to understanding this petition, they are reproduced/transcribed in the Appendices in compliance with Supreme Court Rule 14.1(i)(vi).

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT No. 96-2159

MARIE ASSA'AD-FALTAS, **on behalf of herself and the class she represents,** *Plaintiff-Appellant,*
SORAYA F. FARES, *Plaintiff,*

v.

UNIVERSITY OF SOUTH CAROLINA; ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; CAROL NANCE; BOARD OF TRUSTEES, in its corporate capacity; JOHN PALMS, both individually and officially as USC president; JAMES MOESER, both individually and officially as Provost; EDWARD FLOYD, officially as chair of USC's Board of Trustees; MARK BUYCK, officially as chair of USC's Academic Affairs Committee; THOMAS STEPP, individually and as Secretary of USC's Board of Trustees; ALTON McCoy, officially as USC's Internal Auditor; EDWARD VAUGHN, officially as South Carolina Auditor; MARGARET STILLWELL, officially as South Carolina Auditor; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; DOUGLASS BRYAN, officially as DHEC Commissioner; FOSTER YOUNG, officially as Deputy Commissioner of DHEC; JAMES PADGET, both individually and officially; ROBERT BALL, both individually and officially; JUDY WEEKS, both individually and officially; RUSS MCKINNEY, both individually and officially; WALTER PARHAM, both individually and officially; CLIFFORD SCOTT, both individually and officially; J. O'NEAL HUMPHRIES, both individually and officially; CAROLINE STROBEL, both individually and officially; LAWRENCE DARK, both individually and officially; JAMES EBERSOLE; ERNEST P. MCCUTCHEON; JOAN M. ALTEKRUSE; LAURA BIRD NOTTINGHAM; ERIC BRENNER; JAMES SEARS; MARSHA WELSH, both individually and officially; PATRICK BARRISSI, both individually and officially,

Defendants-Appellees,

and

ATTORNEY GENERAL FOR THE STATE OF NORTH CAROLINA; MARY SECHREST, both individually and officially; JOHN DOE, unknown person and private organizations in their individual capacities, *Defendants.*

MARIE ASSA'AD-FALTAS, **on behalf of herself and the class she represents,** No. 97-1243 *Plaintiff-Appellant,*
SORAYA F. FARES, *Plaintiff,*

v.

UNIVERSITY OF SOUTH CAROLINA; ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; CAROL NANCE; BOARD OF TRUSTEES, in its corporate capacity; JOHN PALMS, both individually and officially as USC president;

JAMES MOESER, both individually and officially as Provost; EDWARD FLOYD, officially as chair of USC's Board of Trustees; MARK BUYCK, officially as chair of USC's Academic Affairs Committee; THOMAS STEPP, individually and as Secretary of USC's Board of Trustees; ALTON McCoy, officially as USC's Internal Auditor; EDWARD VAUGHN, officially as South Carolina Auditor; MARGARET STILLWELL, officially as South Carolina Auditor; SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL; DOUGLASS BRYAN, officially as DHEC Commissioner; FOSTER YOUNG, officially as Deputy Commissioner of DHEC; JAMES PADGET, both individually and officially; ROBERT BALL, both individually and officially; JUDY WEEKS, both individually and officially; RUSS MCKINNEY, both individually and officially; WALTER PARHAM, both individually and officially; CLIFFORD SCOTT, both individually and officially; J. O'NEAL HUMPHRIES, both individually and officially; CAROLINE STROBEL, both individually and officially; LAWRENCE DARK, both individually and officially; JAMES EBERSOLE; ERNEST P. MCCUTCHEON; JOAN M. ALTEKRUSE; LAURA BIRD NOTTINGHAM; ERIC BRENNER; JAMES SEARS; MARSHA WELSH, both individually and officially; PATRICK BARRISSI, both individually and officially,

Defendants-Appellees,

and

ATTORNEY GENERAL FOR THE STATE OF NORTH CAROLINA; MARY SECHREST, both individually and officially; JOHN DOE, unknown person and private organizations in their individual capacities, *Defendants.*

Appeals from the United States District Court
for the District of South Carolina, at Columbia.
Joseph F. Anderson, Jr., Dennis W. Shedd, District Judges.
(CA-94-1578-3-17BC)

Submitted: October 20, 1998 Decided: November 16, 1998

Before HAMILTON, LUTTIG, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL Marie Assa'ad-Faltas, Appellant Pro Se. Susan Pedrick McWilliams Victoria LaMonte Eslinger, Elizabeth Ann Loadholt Felder, NEXSEN, PRUET, JACOBS & POLLARD, Columbia, South Carolina; Peter Robert Messitt, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

OPINION

PER CURIAM:

Dr. Marie Therese Assa'ad-Faltas appeals the district court's dismissal of her civil action for abuse of the discovery process and the denial of her motions for reconsideration.

We have reviewed the record, the district court's opinions and orders, and all pleadings filed in this court and find no reversible error.

Assa'ad-Faltas's repeated failures to produce documents and comply with discovery orders, combined with her demeanor during her deposition, fully warranted the sanction of dismissal. *See Hillig v. Comsnr,* 916 F.2d 171, 174-75 (4th Cir. 1990); *Mutual Fed. Savs. & Loan Ass'n v. Richards & Assoc., Inc.,* 872 F.2d 88, 92 (4th Cir. 1989). Further, Assa'ad Faltas's motions for reconsideration were properly denied. *See United States v. Williams,* 674 F.2d 310, 313 (4th Cir. 1982). Accordingly we affirm the district court's orders.

We deny as moot Assa'ad-Faltas's motion for reconsideration of this court's denial of her motion to consolidate this case with the appeals in Nos. 96-2086 and 96-2177. *See Assa'ad-Faltas v. State Newspaper,* No. 96-2086 (4th Cir. July 16, 1998) (unpublished); *Assa'ad-Faltas v. Attorney General,* No. 96-2177 (4th Cir. Oct. 6, 1998) (unpublished). We decline Assa'ad-Faltas's request lo consider this appeal in banc. *See* Fed. R. App. P. 35; 4th Cir. Loc. R. 35(b). After the briefs were filed, Orin Briggs filed a notice of appearance for Assa'ad-Faltas for the purpose of participating in oral argument. However, we decline to hear oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT No. 96-2177

MARIE ASSA'AD-FALTAS, a/k/a Dr. Faltas, MD, MPH,

Plaintiff - Appellant,

versus

ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; CAROL NANCE, in her individual and official capacities; BOBBY GIST, in his individual capacity; DAVID SHERIDAN, in his individual capacity; PATRICK BARRESI, in his individual capacity; JUDY WEEKS, in her individual capacity; J. O'NEAL HUMPHRIES, in his individual capacity;LAWRENCE DARK, in his individual capacity; JOAN M. ALTEKRUSE, in her individual capacity; ERNEST ALTEKRUSE, in his individual capacity; RICHARD CRESWICK in his individual capacity; THE LAW FIRM OF NEXSEN, PRUET, JACOBS & POLLARD, LLP, in its corporate capacity; VICTORIA ESLINGER, in her individual capacity; SUSAN MCWILLIAMS, in her individual capacity; JOHN TRUSSEL, in his individual capacity; EDWARD TURBEVILLE, in his individual capacity,

Defendants - Appellees,

and

RANDALL CHASTAIN, in his individual capacity; THE STATE NEWSPAPER, in its corporate capacity; KATHERINE GRAY, individually and as agent of the State Newspaper; CLAUDIA SMITH BRINSON, individually and as agent of the State News paper; PATRICK BLANCHAT, individually and as agent of the State Newspaper; THOMAS MCLEAN, individually and as agent of the State News paper; WILLIAM RHONE, individually and as agent of the State Newspaper; CHRIS RILEY; UNKNOWN-NAMED DEFENDANTS,

Defendants.

MARIE ASSA'AD-FALTAS, a/k/a Dr. Faltas, MD, MPH, **No. 97-1272**

Plaintiff - Appellant,

versus

ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; CAROL NANCE, in her individual and official capacities; BOBBY GIST, in his individual capacity; DAVID SHERIDAN, in-his individual capacity; PATRICK BARRESI, in his individual capacity; JUDY WEEKS, in her individual capacity; J. O'NEAL HUMPHRIES, in his individual capacity; LAWRENCE DARK, in his individual capacity; JOAN M. ALTEKRUSE, in her individual capacity; ERNEST ALTEKRUSE, in his individual capacity; RICHARD CRESWICK, in his individual capacity; THE LAW FIRM OF NEXSEN, PRUET, JACOBS & POLLARD, LLP, in its corporate capacity; VICTORIA ESLINGER, in her individual capacity; SUSAN MCWILLIAMS, in her individual capacity; JOHN TRUSSELL, in his individual capacity; EDWARD TURBEVILLE, in his individual capacity,

Defendants - Appellees,

RANDALL CHASTAIN, in his individual capacity; THE STATE NEWSPAPER, in its corporate capacity; KATHERINE GRAY, individually and as agent of the State Newspaper; CLAUDIA SMITH BRINSON, individually and as agent of the State News paper; PATRICK BLANCHAT, individually and as agent of the State Newspaper; THOMAS MCLEAN, individually and as agent of the State News paper; WILLIAM RHONE, individually and as agent of the State Newspaper; CHRIS RILEY; UNKNOWN NAMED DEFENDANTS,

Defendants.

Appeals from the United States District Court
for the District of South Carolina, at Columbia.
Joseph F. Anderson, Jr.; Dennis W. Shedd, District Judges.
(CA-95-1521-3-17)

Submitted: September 22, 1998 **Decided: October 6, 1998**

Before HAMILTON, LUTTIG, and MOTZ, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Marie Assa'ad-Faltas, Appellant Pro Se. Peter Robert Messitt, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia; Susan Pedrick McWilliams, Victoria LaMonte Eslinger, Elizabeth Ann Loadholt Felder, NEXSEN, PRUET, JACOBS & POLLARD, Columbia, South Carolina, for Appellees.
Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:
Dr. Marie Therese Assa'ad Faltas appeals the district court's orders dismissing her civil action for abuse of the discovery process, denying her motions to reconsider, and granting sanctions to the Defendants under FRCP 11. We have reviewed the record, the district court's opinions and orders, and all of the pleadings filed in this court and find no reversible error. Assa'ad Faltas's failure to return to her deposition without permission of the special master, combined with her refusal to cooperate with discovery throughout the proceedings, warranted dismissal of the action. FRCP 37(d); Mutual Fed. Savs. & Loan Ass'n v Richards & Assoc., 872 F.2d 88, 92 (4th Cir. 1989). Further, Assa'ad Faltas's motions for reconsideration were properly denied. United States v. Williams, 674 F.2d 310, 313 (4th Cir 1982).

Finally, the district court did not abuse its discretion in awarding sanctions under Rule 11 based on Assa'ad Faltas's pursuit of untenable and patently meritless claims. See In re Kunstler, 914 F.2d 505, 518 (4th Cir. 1990). Accordingly, we affirm on the reasoning of the district court. Assa'ad Faltas v. Attorney Gen., No. CA-95-1521-3-17 (D.S.C. July 23, 1996; Jan. 17, 1997).We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process. AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED November 23, 1998
No. 96-2177

MARIE ASSA'AD-FALTAS, a/k/a Dr. Faltas, MD, MPH CA-95-1521-3-17
Plaintiff - Appellant

v.

ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; CAROL NANCE, in her individual and official capacities; BOBBY GIST, in his individual capacity; DAVID SHERIDAN, in his individual capacity; PATRICK BARRESI, in his individual capacity; JUDY WEEKS, in her individual capacity; J. O'NEAL HUMPHRIES, in his individual capacity; LAWRENCE DARK, in his individual capacity; JOAN M. ALTEKRUSE, in her individual capacity; ERNEST

ALTEKRUSE, in his individual capacity; RICHARD CRESWICK, in his individual capacity; THE LAW FIRM OF NEXSEN, PRUET, JACOBS & POLLARD, LLP, in its corporate capacity; VICTORIA ESLINGER, in her individual capacity; SUSAN MCWILLIAMS, in her individual capacity; JOHN TRUSSELL, in his individual capacity; EDWARD TURBEVILLE, in his individual capacity

Defendants - Appellees

and

RANDALL CHASTAIN, in his individual capacity; THE STATE NEWSPAPER, in its corporate capacity; KATHERINE GRAY, individually and as agent of the State Newspaper; CLAUDIA SMITH BRINSON, individually and as agent of the State Newspaper; PATRICK BLANCHAT, individually and as agent of the State Newspaper; THOMAS MCLEAN, individually and as agent of the State Newspaper; WILLIAM RHONE, individually and as agent of the State Newspaper; CHRIS RILEY; UNKNOWN NAMED DEFENDANTS, **Defendants**

No. 97-1272

MARIE ASSA'AD-FALTAS, a/k/a Dr. Faltas, MD, MPH CA-95-1521-3-17

Plaintiff - Appellant

v.

ATTORNEY GENERAL OF THE COMMONWEALTH OF VIRGINIA; CAROL NANCE, in her individual and official capacities; BOBBY GIST, in his individual capacity; DAVID SHERIDAN, in his individual capacity; PATRICK BARRESI, in his individual capacity; JUDY WEEKS, in her individual capacity; J. O'NEAL HUMPHRIES, in his individual capacity; LAWRENCE DARK, in his individual capacity; JOAN M. ALTEKRUSE, in her individual capacity; ERNEST ALTEKRUSE, in his individual capacity; RICHARD CRESWICK, in his individual capacity; THE LAW FIRM OF NEXSEN, PRUET, JACOBS & POLLARD, LLP, in its corporate capacity; VICTORIA ESLINGER, in her individual capacity; SUSAN MCWILLIAMS, in her individual capacity; JOHN TRUSSELL, in his individual capacity; EDWARD TURBEVILLE, in his individual capacity

Defendants - Appellees

and

RANDALL CHASTAIN, in his individual capacity; THE STATE NEWSPAPER, in its corporate capacity; KATHERINE GRAY, individually and as agent of the State Newspaper; CLAUDIA SMITH BRINSON, individually and as agent of the State Newspaper; PATRICK BLANCHAT, individually and as agent of the State Newspaper; THOMAS MCLEAN, individually and as agent of the State Newspaper; WILLIAM RHONE, individually and as agent of the State Newspaper; CHRIS RILEY; UNKNOWN NAMED DEFENDANTS **Defendants**

On Petition for Rehearing
with Suggestion for Rehearing In Banc

The appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll on the suggestion for rehearing in banc, and As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehealing in banc are denied.

For the Court,
/s/ Patricia S. Connor
CLERK

FILED **LARRY W. PROPES. CLERK**
JULY 11 1996 **Columbia, S.C.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Soraya F. Fares and Marie-Thérèse Assa'ad-Faltas, MD, MPH [hereinafter "Dr. Faltas"], Plaintiffs,
v. C/A No.: 3:94-1578-17
The University of South Carolina [hereinafter "USC"] et al., Defendants.

ORDER ON PLAINTIFF'S' MOTION FOR RECONSIDERATION

This matter is before the court on plaintiff' s motion for reconsideration of this court's order dismissing the present action. That order adopted the Magistrate Judge's recommendation that this action be dismissed for abuse of the discovery process and willful misrepresentations to the court. *See* Order filed March 18, 1996 (Order of Dismissal"); Motion filed April 8, 1996.

*****

The court hereby amends its prior reference to plaintiff's litigation history found at pages 5 - 6 (note 2) in the Order of Dismissal, to include the above referenced matter. Given the reason for the court's discussion of plaintiff's litigation history, this requires no further modification of the original order.

Supplementation of Record
Plaintiff also asks the court to supplement the record to include two letters which were previously submitted to this court for *in camera* review. These include: a January 4, 1994 letter from Walter Parham to Edward Turbeville; and an October 27, 1993 letter from Victoria Eslinger to a representative of the University of South Carolina.

The court finds this request to be reasonable and, therefore, will require defendants to submit these documents, under seal, for whatever future review of this matter may be had.[4]

CONCLUSION

For the reasons stated herein, plaintiff's motion for reconsideration is denied except to the extent that the court amends its recitation of plaintiff's litigation history to include the matter listed above and directs defendants to file, under seal, the two letters referenced above.This matter is, therefore, dismissed with prejudice for the reasons stated in the court's order of March 18, 1996 as further explained above.

IT IS SO ORDERED.

S/Joseph F. Anderson, Jr.
United States District Judge

July 11, 1996
Columbia, South Carolina

FILED **LARRY W. PROPES. CLERK**
AUGUST 1 6 1996 **COLUMBIA. S. C.**

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Marie-Therese Assa'ad-Faltas, MD, MPH,
Plaintiff,

v. C/A No.: 3:95-1521-17

The Attorney General of Virginia, *et al.*,
Defendants.

SUBSTITUTED ORDER DENYING PLAINTIFF'S MOTION TO ALTER OR AMEND

Before the court is plaintiff's motion to alter or amend the judgment in this case. Underlying this motion is a request that the court reverse its earlier orders discussing various defendants and claims, reverse its award of sanctions, and reverse its dismissal on grounds of discovery abuse. Also before the court are a variety of related motions or submissions. For the reasons discussed below, the court denies plaintiff's motion to alter and amend.

****

" in a jail cell") to gain plaintiff's compliance with the special master's orders. Plaintiff was well aware that this was no more than a suggestion which was at best unlikely to result and certainly could not have occurred without a prior hearing.

4 This court recalls that these letters were submitted for review in a related case, not this case. Nonetheless, the court directs that they be made part of the record in the present case, to be filed and maintained under seal absent further order of this court.

As the special master advised plaintiff, he had the power to *recommend* sanctions. In any case a fear that the court might impose incarceration as a sanction for contempt would not justify fight. Otherwise, every criminal defendant could justify the same.

****

For all of the above reasons, this court finds no reason to modify its prior ruling based on some later offered speculative "guilt trip" that plaintiff would like to conduct for the court.

II. THE PROPRIETY OF THE EARLIER RULE 11 SANCTIONS.

Plaintiff argues in one of the document filed August 2, 1996, as well as in an August 6, 1996 submission, that the court improperly imposed monetary sanctions for Rule 11 violations on her because she is immune from liability for legal arguments made by her lawyer in the complaint.[9] The court will address this argument although plaintiff did not raise it at the appropriate time (when the sanctions were under consideration or in the earlier motion(s) to reconsider imposition of sanctions or the dismissal motions on which they were based. The specific provision on which plaintiff relies reads follows:

---

9 This action was initially filed by counsel. The court granted counsel's request for the matter to proceed in forma pauperis. Within forty-five days thereafter, plaintiff sought to consolidate this case with another within which she was proceeding pro se and sought to be allowed to sign pleadings in the proposed combined action on her own. The court denied this motion. Immediately thereafter, plaintiff's attorney sought to be relieved as counsel. Notably, this is the first document which appears to have actually been prepared by counsel (different type style, double spaced). This motion was granted. In the interim between when counsel filed his motion to be relieved (July 7, 1995) and the date the court granted this request, counsel continued to sign all documents but they appear from form and type style to have been prepared by plaintiff. After August 24, 1995, plaintiff appears to have signed all pleadings including a combined response to all defendant's dispositive motions (which was filed on September 21, 1995. She filed a second memorandum of the same nature on September 28, 1996. Her former attorney filed some subsequent documents but only regarding sanctions motions which were asserted, in part, against him. In addition, plaintiff argued the dismissal motions orally before this court and essentially reargued them in the Rule 11 proceedings. See generally, Documents signed by plaintiff filed September 28 and October 30,1995 (Opposition to Rule 11 motions). November 2, 1995 (motion to reopen summary judgment for one defendant), December 6 and 26, 1995 (opposing one Rule 11 motion and arguing for reconsideration of imposition of Rule 11 sanctions against plaintiff and her attorney). While plaintiff's arguments against Rule 11 sanctions are not themselves the basis for imposing sanctions, they provide a written record (in addition to the hearing transcripts of plaintiff's continued advancement of the legal positions advanced in the complaint.

"Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2)." Subdivision (b)(2) requires that "claims, defenses, and other legal contentions [in a signed filed document, or later advocacy] are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law." Fed. R. Civ. P. 11(b)(2). Plaintiff's reliance on this subsection are misplaced for several reasons. First, although plaintiff was represented at the time the complaint was filed, she was not represented when she later continued to vigorously advance the claims in the complaint both in oral argument and in written opposition to the defendants' dispositive motions. Plaintiff's advancement of the claims included, in some instances, motions for reconsideration filed after the court's dismissal of various claims and imposition of sanctions. Later advocacy is an independent basis for the imposition of sanctions as noted in the initial paragraph of subsection (b).[10] Second, the imposition of sanctions against plaintiff was, at least in part, based on certain of her factual assertions which proved to have no foundation whatsoever. Rule 11(c)(2)(A) has no applicability to factual assertions.

Most of the remaining arguments regarding Rule 11 have been fully addressed in prior orders or simply justify no response. The court will, however clarify the reason it did not impose sanctions in favor of Ms. Eslinger as to all claims but did as to her law firm. First, the court did award sanctions in favor of Ms. Eslinger, although not on one of the claims asserted against her. While that last claim was ultimately dismissed on summary judgment motion, the court found that the assertion of it did not rise to the level of sanctionable conduct. By contrast, there were a number of claims asserted against Ms. Eslinger and her employer as this court read the complaint, both for Ms. Eslinger's conduct and conduct of others).[11]As to all these claims except the one referenced above, the court dismissed the claims on Rule 12(b)(6) or Rule 56 grounds and found the assertion of the claims sanctionable. The fees awarded to Ms. Eslinger's employer were based on the claims for which it was independently dismissed. It would have no expenses as *respondeat superior* under the one remaining claim against Ms. Eslinger other than Ms. Eslinger's defense fees which were, as noted above, denied as to this one claim. **********

10 Although the court will not rely on this, it notes that the complaint was clearly drafted by plaintiff who then convinced her attorney to sign the complaint.

11 Plaintiff has since suggested that defendants and the court read her complaint too broadly. If so, the time for plaintiff to clarify the limited basis of the claims she was asserting was when faced with the first motion, argument, or document indicating a misunderstanding by the court or defendants. Quite the contrary, plaintiff only suggested this narrowing when the Rule 11 sanctions were raised.

Plaintiff also argues that the court had a duty to dismiss her claims under 28 U.S.C. §1915(d), if at all, and that because the claims were not dismissed prior to service, the court is precluded from imposing Rule 11 sanctions. Such an interpretation would turn a tool available to courts to protect defendants from frivolous claims into a shield to protect the filers of frivolous claims. Clearly, that is not the intent of this rule. Plaintiff's interpretation would, moreover, seriously impair significant due process rights of the defendants. It would also impose an incredible burden on the courts, deny the court the advantage of briefing by the parties when that would be helpful, and delay the service of most *in forma pauperis* complaints.

Not only is this court confident that none of these results was intended by Section 1915(d), but it is confident that plaintiff knows it. Clearly she did not raise this argument at any earlier time despite her clear familiarity with the *in forma pauperis* provisions. For the reasons discussed above, the court finds no reason to modify its decision to impose Rule 11 sanctions.

III. THE COURT'S DISMISSAL OF VARIOUS DEFENDANT'S AND CLAIMS ON RULE 12(B)(6) AND 56 GROUNDS.

Plaintiff challenges the court's earlier dismissal of various claims and defendants under Rules 12(b)(6) and 56 of the Federal Rules of Civil Procedure. The reasons for these dismissals were set out in various earlier orders, most of which were issued at least six or more months before the present motion. Plaintiff has also reargued some or all of these motions in one form or another. This court will not, therefore revisit these issues except the few points addressed below. Plaintiff again argues, as in the submission discussed immediately above, that once the complaint passed § 1915(d) muster, the court could not, on its own, raise a question as to the viability of a claim. Specifically, plaintiff seems to be referring to the court's various *sua Sponte* orders of dismissal of various claims. The court does not see why, if it has authority to dismiss claims under 1915(d) before service, it cannot raise the same concerns later when it has had an opportunity to delve into the complaint and sort out the large number of overlapping claims to determine which are viable. In the present case, the court dismissed a number of claims relating to parties who had not yet appeared which claims duplicated others the court had dismissed as to other parties on the same grounds Certainly it was in the interest of judicial economy to do so.

*****

CONCLUSION

For the reasons discussed above, this court denies plaintiff s motion to alter or amend the judgment.

IT IS SO ORDERED

S/Joseph F. Anderson, Jr.
United States District Judge

August 14, 1996
Columbia, South Carolina

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Soraya F. Fares and Marie-Thérèse Assa'ad-Faltas, MD, MPH Plaintiff,
v. C/A No.: 3:94-1578-19
The University of South Carolina [hereinafter "USC"] *et al.* Defendants.

Marie-Thérèse Assa'ad-Faltas, MD, MPH
Plaintiff,)
v. C/A No.: 3:95 - 1521 - 19
The Attorney General of Virginia; *et al.*,
Defendants.)

PLAINTIFF'S RULE 60(b) MOTION TO SET ASIDE THE JUDGMENT
ON ALL HER CLAIMS AGAINST ALL DEFENDANTS
AND TO ENTER JUDGMENT FOR HER
BASED ON NEWLY-DISCOVERED EVIDENCE
HAT COMPELS THIS RESULT
(ORIGINAL FILED 25 NOVEMBER 1996)

Stamped/DENIED
1/16/97
Signed/Dennis W. Shedd
United States District Judge

FILED JANUARY 16 1997
LARRY W. PROPES, CLERK
COLUMBIA, S.C

PREVENTIVE MEDICINE

FACULTY APPLICANT INTERVIEW EVALUATION

APPLICANT: *Dr. Marie Faltas* EVALUATOR: *IMA* INTERVIEW DATE: *5-3-91*

CONSIDERATIONS:

1. Appearance articulates ideas relates to you *Distinguished, Poised. Personable, Excellent use of the language in relating and expressing complex ideas. Accent but with acceptable vocal usage.*
2. Range of knowledge and ideas; clarity of reasoning; awareness of deficits; language facility. *Thoughtful, experienced, logical (left brained)*
3. Realistic perception of own personal and professional goals, societal and community concerns, (investment in family) *not discussed Mature notions of Prev med & good alignment of skills with objectives.*
4. Active interest in extra-medical matters; breadth of interest; joie de vivre. *good sense of humor*
5. Adequate support system—parents, spouse, etc. *Presumably (I have no c.v. or background info.)*
6. Community involvements, past employments, leadership positions. *Frequent moves; some related to health, licensure, fellowship & assistanceship termination & with capabilities which exceeded the jobs in P.H. which she held.*
8. Orientation toward region, state, institution. *OK: Knows N.C. well (1st there in 1979). Candidate's mother is citizen resident of N.C.*
9. Academic strengths—grades. *Intellectually superior.*
10. Honors; professional recommendations. *Fulbright fellowship from Egypt to US - 1979; very competitive*

STRENGTHS: *Advanced prof. knowledge & status*

WEAKNESSES: *Tendency to change employment often. (See above re possibly mitigating circumstances). We are only expecting a year (Practicum) stay, so this is not likely to be an issue.*

COMMENTS: *This applicant is more like the "mid-career" residents that brought richness to the program in past years. I feel that her contributions would be significant & her continued profession practice in Prev Med is extremely promising. Advise acceptance.*

What effect do you think applicant would have on fellow faculty, patients and programs? *(+)*

Please rate this faculty candidate in each of the areas a faculty member must fulfill: *Not applicable but good probability of productive work in these areas.(Certainly competitive with some faculty candidates)*

APPLICANT RATING SCALE *8. Superior candidate—would be a real asset to our department.*

Special note: I spoke to Sec/Treas ABPM about adequacy of her clinical year. IF she has a license in a state within the US, the Bd will be likely to view the clin. requirement as met.

.....EVALUATOR: *JMA*

Resident ~~FACULTY~~ APPLICANT INTERVIEW EVALUATION

APPLICANT: *Faltas, Marie* EVALUATOR: *E. McCutcheon* DATE: *5/3/91*

CONSIDERATIONS:

2. Range of knowledge and ideas; clarity of reasoning; awareness of deficits; language facility. *Some accent, but intelligible and articulate*
3. Realistic perception of own personal and professional goals, societal and community concerns, investment in family. *Uncertain cultural differences prevent adequate assessment; superficially satisfactory. Articulates wide range of experiences*
4. Active interest in extra-medical matters; breadth of interest; joie de vivre. *struggling & persisting to find entry into preventive medicine — "paying her dues"*
6. Community involvements, past employments, leadership positions. *Has worked in Va health dept. but not a good experience*
7. Orientation towards preventive medicine. *STRONG*
8. Orientation toward region, state, institution. *mother is NC (and US) resident*
9. Academic strengths—grades. *High*
10. Honors; professional recommendations. *Dr Tyroler's letter is relatively unenthusiastic; she did not publish her MPH thesis work*

STRENGTHS: *Excellent vocabulary in English*
MPH + at first-class institution/program

WEAKNESSES: *Direct patient care experience limited, did not perform satisfactorily at Anderson program (personal comm.) letter stated "half a year" of primary care residency, actually only 4 months (2 @ Anderson, 2 @ Meharry)(+2 yrs in path[ology].)*

COMMENTS: *Strongest applicant in pool. Not fully satisfied with her reasons for withdrawal from the Path[ology] residency—states it was because of potential infectious hazards to her health*

What effect do you think applicant would have on fellow faculty, patients and programs? *Generally positive—cultural gap may be problem with SC patients from non-professional background*

Please rate this ~~faculty~~ *resident* candidate in each of the areas a faculty member must fulfill: Research Z Teaching Z Service Z Overall Z

7. Very good candidate but has one area of concern (specify) *Cultural gap*

EVALUATOR: *E. McCutcheon*.....

CONFIDENTIAL MEMORANDUM

TO: Dr. Ernest P. McCutcheon
Preventive Medicine Residency Director
FROM: Dr. Joan M. Altekruse [i/JMA]
RE: Dr. Marie Faltas Preventive Medicine Resident
DATE: April 12, 1993

I want to bring to your attention attitudes and behaviors of Dr. Faltas which cause concern. She came to my office to object to my effort to ascertain the activities she is engaging in to fulfill the requirements of the Practicum year. She suggested that my inquiries might represent "reprisal" (her word) due to our differences of opinion on subjects unrelated to her professional activities here. She asserted that such "micro pedagogic" (her words) monitoring was inappropriate and excessive, especially given her age and the duration of her professional experience.

She claimed that faculty disinterest in residents accounted for difficulties of three recent graduates in locating post-residency employment and that genuine interest on my part would be better employed in placement efforts. My responses emphasized that faculty priorities were to assure the quality of the Practicum and to evaluate residents' work on "time/effort" as well as "product delivery". Faculty responsibilities and evidence of interest in residents' career development may relate to subsequent placement, but are not a primary function. I also suggested that her sample of immediate "disastrous" employment outcomes was poorly drawn and her interpretations in error. (Her references were to three program graduates—two of whom have special requirements, such as limited job mobility and family responsibilities. The third is well placed professionally, but was disappointed in not being accepted into an intensely competitive program.) Dr. Faltas "data" is shy on figures for the denominator of the population she describes and not reflective of the general experiences of the program or its residents.

It became increasingly evident to me that serious attempts to deal with her objections only opened up additional expressions of dissatisfaction and of accusations on her part. For example, she asserted that I had failed to provide her with connections to political figures who would enhance her work and her success in placement for next year. If she were merely demonstrating anxiety about the next phase of her career, I would (and still feel) empathetic and willing to assist. However, her demands are exaggerated, even extreme, as is her sense of being aggrieved. She tends to introduce extraneous issue, such as discrimination against her as a foreigner and a female. Those perceptions might have merit, but, in my view, not nearly to the degree she imputes to them.

Instead they appear to be a strategy to get sympathetic attention. However, when presented in an overly accusatory manner which misconstrues the motives and objects to the supervisory functions, they become problematic for faculty and dysfunctional for her. Part of my concern is that if we ignore her present deportment, it may grow more idiosyncratic and self-re-enforcing. She needs to learn more about working within an organization in ways that do not imperil the regular and enduring employment status that she needs, wants and has been unable to secure in some previous work settings.

Please let me now when the Residency Advisory Committee will meet to continue our process of evaluation and feedback to residents. Those mechanisms, based on faculty monitoring are effective means to assure the quality of our Practicum and of residents' preparation for their future work, Dr. Faltas' views not withstanding.

THE UNIVERSITY OF SOUTH CAROLINA

School of Medicine PREVENTIVE MEDICINE 803-733-3306

April 29, 1993

Mr. Paul A. Williams
Brocker Health Center, UNC- Charlotte
Charlotte, NC 28223

Re: Reference letter for Marie Assad-Faltas, MD, MPH

Dear Mr. Williams:

This letter is intended to summarize the content of our Preventive Medicine residency program and to convey the competencies which Dr. Assad-Faltas has acquired and improved as a resident in the second year of our program. As you may know, the PM residency requires a clinical year in any primary care field, which is followed by a two year program of academic and supervised clinical work. After completing her pre-clinical training in Egypt in 1977, Dr. Assad-Faltas performed graduate training in the US, completing two years of a pathology residency at the University of Illinois at Chicago in 1986, and a year of Family Practice training through a combination of rotations at Anderson Memorial Hospital (1990), Meharry Hubbard Hospital (1990-91), Baptist Memorial Hospital in Winston-Salem (1991), and Richland Memorial Hospital in Columbia (1992). Also relevant was her work as a health director in Virginia, where she qualified for a medical license. The first or academic year requirement for the PM residency can be met by obtaining an MPH, which she received from the University of North Carolina in 1982. Dr. Assad-Faltas is projected to complete the second year of the PM program on June 30, 1993; after a year of practice in the field of PM, she would be eligible to apply for examination by the American Board of Preventive Medicine. In our program, she has extensive experience in our PM ambulatory care clinics.

These clinics include a wide variety of patients, ranging from issues of lifestyle change such as cigarette smoking and lack of exercise through pharmacological management of hypertension and sexually transmitted diseases. As part of this activity, she developed a new patient handout on reducing the risk of melanoma which we are using routinely. Other rotations include Health and Safety, SC health department (Department of Health and Environmental Control), and multi-disciplinary medical-industrial sites (Savannah River Plant and Fort Jackson). Her evaluations have been generally satisfactory. ***She is an inquisitive and able clinician in these settings.***

Additional activities include attendance at several national and regional meetings, and development of projects in health policy and evaluation of the outcomes for patients receiving care in our VA ambulatory care clinic. *In conclusion, I would expect that the breadth and depth of her medical expertise would qualify her for work as a physician in a student health center, particularly considering the importance of health promotion and disease prevention in that setting.*

Please feel free to call me if you need additional information. My number is 803-434-6116.

Sincerely yours,
s/ Ernest P. McCutcheon, MD, MPH
Associate Professor and Preventive Medicine Residency Director
Department of Family and Preventive Medicine.

MEMORANDUM

TO: Dr. Ernest P. McCutcheon
Director, Preventive Medicine Residency Program

FROM: Dr. Joan M. Altekruse initialed/*JMA*
Professor of Preventive Medicine

DATE: May 27, 1993

RE: Recommendation for Dismissal of Dr. Marie Faltas from the Preventive Medicine Residency

Since the meeting of the Residency Admission and Evaluation Committee (May 13, 1993), I have had an opportunity to review the tape of that session and the letter to Dr. Faltas which contains the recommendations of that committee regarding her present status and the requirements she must meet to complete the Practicum Year.

I have declined to sign that letter because I find the terms too lenient given Dr. Faltas' inadequate and inappropriate performance in the Practicum Year. Instead I favor termination of her status as a temporary employee and resident as promptly as due process requirements applicable to resident dismissal will allow.

That action is consistent with procedures defined by S.C. Dept. of Human Resources, the VA and internal regulations of the Residency program. My recommendation is based on the following examples of Dr. Faltas' behavior during the course of her training here:

- Failure to make satisfactory progress toward completion of her primary Practicum project within the period prescribed for that purpose.
- Refusal to cooperate with faculty and the standing committee charged with resident evaluation. (Please refer to tape of committee noted above).
- Abusive and disruptive behavior directed toward clerical staff, administrative employees and faculty within the Division of Preventive Medicine, as well as toward persons beyond her immediate academic environment.

In the course of the year her problems with managing interpersonal relationships have escalated. Apparent self-confidence has changed to arrogant contentiousness, incivility, loud aggressive outbursts and, recently, fabrications of discriminatory treatment. They have acquired a level of routine unacceptability. Recently she has made unwarranted accusations against co-workers. During the year Dr. Faltas' presence has generated social stress among many of her associates and has consumed excessive time to handle the exaggerated claims and demands she has imposed on staff, faculty and Division resources. *She has rejected verbal correction and written complaints about her behavior. In fact she has countered such efforts with allegations of harassment on the grounds of ethnic, national, gender and disability discrimination.* (Initial informal review of the latter claim to the Executive Assistant to the President of USC for Equal Opportunity Programs found her request to lack merit).

Disagreement with positions she espouses arouses extreme negativity toward the person presenting a view that conflicts with Dr. Faltas' beliefs. An expanding number of subjects have produced this reaction, ranging from the interpretation of data on ***sexual orientation***, ***creationism*** *and estimating her own expert status. Colleagues in affiliated programs, individuals in the community; in other units of the University, other state and academic institutions have declined further association with her because of the attitude of intolerance,* ***judgmental certainty***, *condescending authoritarianism, and* ***moral superiority*** *which she feels entitled to express. These events damage the residency program and the good will which we have striven to develop among colleagues. (Please note the tape of a radio broadcast presented by S.C. Educational Radio on May 13, 1993, and the article Dr. Faltas authored for* <u>*The State*</u> *newspaper. Both demonstrate her grandiose self-assessment, anger at contradicting evidence, and disdain for those who offer it).*

Conscientious efforts by several members of the faculty who have repeatedly sought to advise her have been rebuffed. In fact, serious discourse is now essentially infeasible due to her adversarial and aggressive verbal behavior. She deflects substantive issues regarding her activities with legalistic stratagems (I am not obligated to answer to this Committee) and non-pertinent procedural challenges When was the last time this committee met?) [Please hear the Committee meeting tapes of May 13, 1993. They convey far better than my words the degree of her departure from acceptable collegial interaction.] Numerous examples illustrate extraordinary efforts by would-be mentors here to serve her interests, assist her professional advancement and accommodate her personal convenience. Her responses have been to discount and dismiss those actions, or worse, to radically misconstrue them as either inadequate to the entitlements she rightfully commands or intentionally damaging to her.

The difficulties presented by Dr. Faltas represent extremes that I have not encountered during my years of experience with residents. I have given much consideration to measures to normalize Dr. Faltas' performance and to increase her own levels of security and satisfaction. Without pretending to delve into psychological attributes which might explain her interpersonal difficulties, I can, nevertheless, empathize with the personal pain and discomfort she must feel secondary to her failed relationships and worsening professional performance. It has occurred to me that her behavior may be a call for help. Yet her lack of insight and denial of her role as a contributor to the problems that surround her leave us with few effective ways to assist. In addition to angry rejection of what we, as faculty, have attempted to offer, she adamantly refuses to obtain the professional counseling that has been formally recommended to her.

Until Dr. Faltas recognizes that legitimately assigned responsibilities cannot be shrugged off, that self-made claims of superior intellect and authority do not substitute for adequate performance, that civility and respect are necessary parts of professional socialization and interaction, that colleagues must not cater to forcefully expressed whims and intimidation, she is not, in my view, a candidate for successful completion of this or any other graduate medical educational program. Under the present conditions I feel obligated, according to my belief that such action embodies fairness, to recommend that Dr. Faltas be dismissed. This is a sad and onerous duty, and in sharp contrast to my earlier expectations for her success in our program. I believe that to equivocate on this decision, particularly on the pragmatic grounds that she will soon leave the residency, is a failure of faculty responsibility to evaluate fairly and accurately and to take action in accordance with those findings.

To ignore her serious shortcomings would be a breach of the special trust that the public confers on educators. It is my firm conviction that endorsing her performance as acceptable or her training experience as a successful fulfillment of the Practicum year of the Preventive Medicine Residency would be a disservice to the public, the specialty, the standing of the University of South Carolina the residency and, arguably, to Dr. Faltas' long term professional functioning.

UNIVERSITY OF SOUTH CAROLINA

SCHOOL OF MEDICINE **May 28, 1993**

Dear Dr. Faltas:

The Residency Director and the Admissions and Evaluation Committee met today to review your communication of May 24, 1993, in response to our letter of May 21, 1993. After thorough discussion, we reached the following conclusions:

1. We urge you to seek the professional counseling we recommended previously. Your recent actions (including an absence for illness) indicate your need for such help may be increasing and you should proceed quickly to obtain that assistance.
2. In recognition of the above, you are suspended immediately from your duties and responsibilities as a resident and from access to the resources of the department. Your pay will continue until June 30 as previously agreed. You are required to remove any personal items and turn in all School of Medicine keys and library photocopy card immediately.
3. The final decision regarding your status in the program, which may include reinstatement or termination as possible outcomes, will be reached within the next 10 days and you will be notified of our decision regarding your status as resident.

Sincerely yours,

s/Ernest P. McCutcheon, MD, MPH

Director, Preventive Medicine Residency Program

c: James Ebersole, Chair, Department of Family and Preventive Medicine

J. O'Neal Humphries, Dean, School of Medicine

Lawrence Dark, JD, Executive Assistant to the President for Equal Opportunity Programs

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FROM: DIVISION NUMBER TO:USC LEGAL DEPT JUNE 9 1993 8:48 AM

Mr. Clifford Scott, Associate General Counsel

Dear Mr. Scott

This is a request that you consider delaying "signing off" on terms for a "resolution" in the case of Dr. Marie Faltas until additional pertinent materials are obtained. Items expected here within 1-3 days are expected to detail her extensive involvement in litigation procedures & clarify her Immigration status.

Since the referenced information may influence a decision on her retention or dismissal from the medical training program for specialists, I urge you to avoid closure on current agreement which may be based on partial knowledge of relevant facts.

Yours truly,

Joan M. Altekruse, M.D., Dr.P.H.

Professor of Preventive Medicine, USC School of Medicine

c/Dr. Ebersole

Dr. McCutcheon tele: 733-3316

SOURCES OF INFORMATION REGARDING MARE FALTAS

Social Security No. 241 0682

= Ms. Mary P. Sechriest (919) 962-3031
UNC-Chapel Hill Legal Department
Special Assistant to the Chancellor
- Provided verbal review of litigation involving Marie Faltas.
- Marie Faltas sought to have University attorney disbarred. Judge's reprimand regarding "hundreds of court staff hours on Marie Faltas' case".
- Large file mailed here, June 9, 1993.
- FAXED two case discussions (appended)

= Ms. Carol Nance, Attorney General's Office, Richmond, Virginia (804) 786-1021 Referred to Marie Faltas' multiple suits regarding "discrimination" (on various grounds), "sexual harassment", "personal distress". Cases (under various names?) in at least three states (Arkansas, Virginia, North Carolina); to state and federal courts, appellate courts and U.S. Supreme Court. Named as defendants: universities (3), employers, individuals.
- Marie Faltas allegedly misrepresented herself to Virginia Board of Medical Examiners where she obtained a full medical license. Was allowed to leave the sate without revocation.
- Advised review of Marie Faltas' immigration status: maybe technical!y unemployable. Was on an exclusion order. Allowed back in "on parole". Check on denial of temporary application July, 1992. "The entire state has learned from this woman" regarding reference requirements.

= Mr. Frank Gary Charleston, S. C.
U.S. Immigration Office (803) 727-4422 (direct line)
- Has located 4 identification numbers 3 case files (These are irregular arrangements)
- Charlotte is merging the data now.
One file is in deportation procedures
..He will attempt to find out why ASAP (June 10, 1993)

USC SCHOOL OF MEDICINE RESIDENCY PROGRAM
IN PREVENTIVE MEDICINE
ADMISSIONS AND EVALUATION COMMITTEE

Record of Meeting of June 10, 1993 10:30 am - 12:00 noon

Committee Members Present: Drs. Joan Altekruse, Ernest McCutcheon, and David Sheridan

Other Faculty Present: Drs. Suzanne McDermott and Anbesaw Selassie

Absent Dr. Phillip Stone

1. Issues related to the status of Marie Assaad-Faltas were reviewed in detail.
2. The members of the Admissions and Evaluation Committee (Altekruse, McCutcheon and Sheridan) moved that Marie Assaad-Faltas be dismissed from the program because of
   1) failure to maintain a satisfactory level o academic performance or field training (item 4 of grounds for termination),
   2) failure to follow the rules, policies, and procedures prescribed for residents (item 5 of grounds for termination),
   3) failure to adhere to professional standards consistent with the judgment and behavior appropriate to a physician (item 1 of grounds for termination).
3. The committee members passed the motion unanimously and the other faculty also concurred; Dr. Faltas is to be dismissed from the program; documentation relating to this decision is attached.
4. The Residency Director is to forward this recommendation to the Department Chair.
5. The next meeting will be scheduled as necessary at the call of the chair.

Prepared by Ernest McCutcheon, MD, MPH
Residency Director and Chair, Admissions and Evaluation Committee

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UNIVERSITY OF SOUTH CAROLINA

SCHOOL OF MEDICINE Department of Pediatrics

September 3, 1 993

David Keisler, M.D., Interim Chairman
Department of Family and Preventive Medicine

Dear Doctor Keisler:

The ad hoc Appeals Committee appointed by Dean Humphries to hear Dr. Marie Faltas' appeal of your department's decision to dismiss her from the Preventive Medicine Residency Program convened on Friday, September 3, 1993. In attendance were: Drs. Lindsie Cone, Warren Derrick, and Nancy Richeson, Committee members; Dr. Marie Faltas; Mr. Clifford Scott, Associate General Counsel, USC; and Mr. James A. Merritt, Jr., Counsel for Dr. Faltas. The 21/2 hour session was audiotaped.

After reviewing the written information made available to the Committee and after considering the information supplied by Dr. Faltas during the hearing, the committee unanimously recommends that Dr. Faltas be reinstated as a resident in good standing in the Preventive Medicine Residency Program. This decision was based on a lack of clear and compelling documentation of the charges for dismissal. If you require elaboration of our findings, the committee will be happy to meet with you at your convenience.

For the Committee: **CONFIDENTIAL**

s/C . Warren Derrick, Jr. M.D.
Chairman

THE UNIVERSITY OF SOUTH CAROLINA

Department of Family and Preventive Medicine
School of Medicine

Six Richland Medical Park Drive
Columbia, SC 29208
803 434-6116

September 9, 1993

J. O'Neal Humphries, M.D.
Dean, School of Medicine
University of South Carolina
Columbia, South Carolina 29203

Dear Dr. Humphries:

I received a letter from Dr. Warren Derrick, Chairman of the Ad Hoc Appeals Committee that recently reviewed Dr. Marie Faltas' appeal concerning her dismissal from the Preventive Medicine Residency Program. I have attached a copy of the letter for your consideration in this matter.

I will await your decision concerning Dr. Faltas' appeal. If any further information is needed, please let me know.

Sincerely,
s/David L. Keisler, M.D., Acting Chairman
Department of Family and Preventive Medicine
USC School of Medicine
Attachment
cc: Clifford Scott, Associate General Counsel
USC System Legal Department

THE UNIVERSITY OF SOUTH CAROLINA

Department of Family and Preventive Medicine
School of Medicine

Six Richland Medical Park Drive
Columbia, SC 29208
803 434-6116

September 20, 1993

J. O'Neal Humphries, M.D.
Dean, School of Medicine
Columbia, South Carolina 29203

Re: Marie Faltas, M.D.

Dear Dr. Humphries:

I have received and reviewed the recommendations of the Appeals Committee concerning Dr. Marie Faltas' dismissal from the Preventive Medicine Residency. It is my recommendation that Dr. Marie Faltas should be reinstated as a Preventive Medicine resident effective at this time.

From discussions with the faculty in Preventive Medicine, it is my understanding that Dr. Faltas must complete a project based on a study at the VA Clinic in order to complete all of her requirements for graduation. It is my recommendation that Dr. Faltas be continued in a paid status as a resident for a six week period of time to allow her to complete this project. Upon successful completion and acceptance of that project, she will then receive her diploma. Dr. David Sheridan will serve as her faculty advisor and assist her in completing this project. In the event that Dr. Faltas does not complete the project in the allotted six weeks, her position as a resident in Preventive Medicine would be discontinued and she could then complete the project on her own time and receive her diploma upon completion. I have attached a copy of a letter from Dr. David Sheridan concerning the specific requirement for completion of this project. If I can be of any further assistance in this matter, please let me know.

Sincerely

s/David L. Keisler, M.D., Acting Chairman,
Department of Family and Preventive Medicine

STATE OF SOUTH CAROLINA
HUMAN AFFAIRS COMMISSION

Dr. Willis C. Ham
Commissioner

2611 Forest Drive, Suite 200, Post Office Box 4490
Columbia, South Carolina 29240

September 29, 1993

Clifford Scott, Esquire
Associate General Counsel
System Legal Department
University of South Carolina
Columbia, SC 29208

Re: Dr. Marie Faltas v. The University of South Carolina
SHAC # 2-93-180REL/Ret/NO

Dear Mr. Scott:

In an attempt to resolve the above-cited charge of discrimination the Commission has met with Dr. Faltas and carefully reviewed the conditions requested by Complainant's attorney in his letter to you dated September 29, 1993. The Commission strongly recommends a resolution in this case because the evidence as presented thus far would warrant a cause determination.

From our meeting with Dr. Faltas, the Commission respectfully requests that the following conditions be met:

1. Reinstatement of Dr. Faltas as a resident in the Preventative Medicine Residency Program ensuring that the same conditions apply to the Complainant as are applied to all similarly situated residents;
2. That appropriate disciplinary action be taken against Drs. Altekruse, McCutcheon and Sheridan to address their alleged discriminatory actions towards the Complainant;
3. That Dr. Faltas' practicum be reviewed in the same fashion as similarly situated residents with the exception that her practicum be reviewed by doctors independent and outside of the Preventative Medicine Residency Program; and
4. Under the current recovery policy of the Commission, Dr. Faltas should be awarded $54,332.^{00}$; $3,500.^{00}$ for legal fees incurred; using a multiple of 5; lost wages ($100,000.^{00}$ year divided by 12 = $8,333.^{00}$ x 4 months = $33,332.^{00}$)

Given the likelihood of a cause determination, the Commission believes that all of Dr. Faltas' demands are reasonable, and amount to far less than court awarded damages. Please respond to the Commission at your earliest convenience.

Sincerely,
s/Ann E. Deal, Investigator

UNIVERSITY OF SOUTH CAROLINA

SCHOOL OF MEDICINE
Department of Family and Preventive Medicine

(803) 765-6116 - Family Medicine
(803) 733-3316 - Preventive Medicine

October 12, 1993

Bobby Gist, Deputy Commissioner
Human Affairs Commission
2611 Forest Drive, Suite 200
Columbia, S.C. 29201

Dear Mr. Gist:

Thank you for the information you provided regarding proper procedures in the case of religious discrimination which Marie Faltas as brought against me and two colleagues on this faculty. The damage to our reputations needs to be held to the minimal, even at this late date.

Attached please find background material you requested. We would be happy to provide further information.

Yours truly,
s/Joan M. Altekruse
Distinguished Professor of Preventive Medicine

THE UNIVERSITY OF SOUTH CAROLINA

Systems Legal Department
Columbia, SC 29208
803-777-7854
FAX 803-777-9500

October 27, 1993

John H. Whittleton, Sr.
State Human Affairs Commission
Post Office Box 4490
Columbia, South Carolina 29240

Re: Dr. Marie Faltas v. University of South Carolina
SHAC Number 2-93-180REL/RET/NO

Dear Mr. Whittleton

This letter is provided in response to the September 29, 1993, letter of Ms. Ann Deal, of the Human Affairs Commission, and constitutes the University's reply thereto.

As you know, the Dean of the School of Medicine, Dr. J. O'Neal Humphries, has recommended Dr. Faltas' reinstatement as a resident in the Preventive Medicine Residency Program. The University will take steps to insure that Dr. Faltas is afforded an opportunity to complete the Residency Program in a manner which is consistent with the Rules, Policies an Procedures governing the Residency Program.

The University acknowledges the other recommendations contained in the above-referenced letter and will act on those recommendations in a manner which it deems appropriate. The University is unable to accept, however, Ms. Deal's recommendation that Dr. Faltas be provided monetary compensation. Thank you for your assistance and cooperation. Please advise if you have any questions.

Sincerely,
s/Clifford Scott
Associate General Counsel

cc: Dr. James C. Moeser, Provost
Walter H. Parham

NEXSEN PRUET JACOBS & POLLARD
ATTORNEYS AND COUNSELORS AT LAW

VICTORIA L. ESLINGER
PARTNER

Direct Dial
803-253-8249
Reply to Columbia

October 28, 1993

Personal and Confidential Attorney/client Privileged

Walter H. Parham, Esquire, Associate General Counsel
University of South Carolina System Legal Department
Columbia, South Carolina 29208

Dear Terry:

I consider this correspondence between us to be attorney/client privileged because Doctors Altekruse, McCutcheon, and Sheridan are faculty members of the University of South Carolina's School of Medicine and have requested this opinion in that capacity although they have born the costs of this themselves.

I have enclosed a copy of opinion to them (which I will be happy to discuss with you) and their proposed correspondence to the Human Affairs Commission. My secretary is out until this afternoon, so these documents do not include the attachments which I will forward as soon as Wanda arrives.

Please call if you have any comments. I would like to discuss the immigration issue with you if you have a chance.

Very Truly yours,

Enclosures s/Victoria L Eslinger

cc: Dr. Sheridan
Dr. Altekruse
Dr. McCutcheon

NEXSEN PRUET JACOBS & POLLARD

VICTORIA L. ESLINGER — Reply to Columbia — Direct Dial

PARTNER — October 28, 1993 — 803-253-8249

Dr. Joanne Altekruse
Dr. Ernest P. McCutcheon
Dr. David P. Sheridan
Department of Preventive Medicine
USC Columbia, South Carolina 29208

CONFIDENTIAL/ATTORNEY CLIENT PRIVILEGED

Re: Dr. Marie Faltas

Dear Drs. Altekruse, McCutcheon and Sheridan:

I have reviewed in its entirety the file and situation regarding Dr. Marie A. Faltas. Included in my review was a review of the 27 court orders and/or opinions issued in miscellaneous lawsuits filed by her which are matters of public record and a review of the individual allegations which she has made about each of you in the press, publicly and to others. As I pointed out during the course of my conversation with you, her EEOC charge of employment discrimination is against the University rather than against each of you individually because Dr. Faltas' charge relates to her dismissal from the USC Residency Program and you as individuals are not her "employers". She has named you as the perpetrators of employment discrimination, essentially acting as agents of the University. Any suit she may be using pursuant to Title VII is by law limited (in a Title VII action) to the charge which she filed with the South Carolina Human Affairs Commission and/or EEOC.

I have prepared a response per your request to be filed with the Human-Affairs Commission (SCHUAC) which sets forth your view of her dismissal and the reasons therefore; the response is attached hereto (without exhibits) for your comments and changes. SCHUAC in all probability because of the breach of confidentiality by Dr. Faltas, will send the matter to the EEOC without a recommendation as to the existence of "cause" or "no cause" for the charge.

I also have prepared an analysis for you as to whether you would be within your rights to insist upon her dismissal in light of Dr. Faltas' refusal to accept the reinstatement offered by the Medical School. By making a counter offer which interposed additional demands, Dr. Faltas declined your offer of reinstatement; her counter proposal operates as a rejection of your offer to settle and now imposes no obligation upon you to settle the matter under the terms previously offered. I would suggest that, if the University (or your Department) decides to reject her recent proposal, you advise her in writing that all previous offers are withdrawn.

In preparing these materials for you I have not addressed any internal problems such as a possible determination by the University that the Medical School should reinstate Dr. Faltas and I have not addressed in detail the issue of what action the Dean of the Medical School may take in light of the Appeal Committee's suggestion that she be reinstated. I do offer as a suggestion that, in light of Dr. Faltas' refusal to accept the reinstatement on the terms offered, you might wish to either go back to the Dean and ask him to rescind the offer and refuse to reemploy her or go back to the Appeals Committee, in light of her rejection of the offer and present evidence which you did not have the opportunity to present during the course of the hearing. Additionally, there are now other matters to be presented to the Committee, such as the omissions in her application, her litigious nature and her immigration status which could have an impact upon its decision regarding reinstatement. You have asked me whether I believe you are within your rights to dismiss Dr. Faltas from the Residency Program and asked specifically that I look at her Title VII charges filed with the Human Affairs Commission in rendering my opinion.1
I undertake herein to give you an opinion on that matter with the caveats that: 1) I cannot guarantee the outcome of a court proceeding and 2) I give no opinion as to what happens if there are any differences in opinion between the School of Medicine and the University of South Carolina within the USC system as to reinstatement.

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1 Title VII is part of the 1964 Civil Rights Act, as amended and is found at 42 USC 2000(e) et. seq. It prohibits employment discrimination on the basis of sex, race, religion or national origin.

1. Title VII Charge. I do not believe that Dr. Faltas will be able to show a violation of Title VII for religious discrimination or national origin discrimination. Dr. Faltas has filed a charge only against the University of Drs. Altekruse, McCutcheon and Sheridan South Carolina and not against any of the physicians individually. Procedurally, Title VII requires that a charging party file a charge within one hundred and eighty (180) days of the last discriminatory act. Dr. Faltas may amend her EEOC charges provided the acts(s) of which she complains occurred during the prior 180 days (or in some cases 300 days).

The Human Affairs Commission is a deferral agency and the EEOC generally allows it to investigate charges. Jurisdictionally the Human Affairs Commission or the EEOC has sole control of investigation of these charges during a 180 day period after the date of the filing of the charge. Any time after the 180 days from the date of the filing of the charge Dr. Faltas may request a Right To Sue Letter (regardless of whether or not the Commission has made a finding of "for cause" or "no cause").

Once the Right To Sue Letter is issued, Dr. Faltas has 90 days to bring an action in federal court and one hundred and twenty days to bring an action in state court. She is limited in any lawsuit to the charges under Title VII which were raised in her charge. (She can make other allegations pursuant to the common law or other statutes in the same suit). Upon the filing of a Title VII suit, the court would look at the matter de novo, which means that it would not be bound or influenced at all by any finding of "cause" or "no cause" made by the EEOC or Human Affairs Commission.

If Dr. Faltas desired, she could add to her Title VII lawsuit individual lawsuits against anyone else and/or could add additional other non Title VII claims and causes of action for her dismissal.I will address these matters later in this letter because I note that after reviewing all of the lawsuits she has filed that Dr. Faltas' general practice is to take a "shotgun" approach and sue everyone within her sight for every cause of action which she can think of.

In order to prove a Title VII charge, Dr. Faltas must first establish a prima facia case of discrimination on the basis of one of the allegations in her charge; that is, discrimination on the basis or her national origin or her religion. To do that, she must show she belongs to the protected group and that,she was harassed on the basis of her religion or national origin. The burden of proof then shifts to the University to rebut the presumption of discrimination by showing legitimate, nondiscriminatory reasons for the employment decision in question.

In my mind there is ample evidence for her termination for all of the reasons set forth in your various memoranda and internal documents, for reasons including but not limited to her treatment of faculty members and staff, her refusal to follow program rules, policies and procedures, her failure to keep her work on schedule, her inappropriate temperament and failure to adhere to personal or professional standards consistent with the judgment and behavior appropriate to a physician.

Once the University shows that there were legitimate, nondiscriminatory reasons for the employment decision, the burden then shifts to Dr. Faltas to show that the reasons were pretextual and that the employment decision was based on the motive of her national origin or religion. Assuming that Dr. Faltas could make the initial prima facia showing of national origin and religious discrimination, I believe it would be virtually impossible for her to show that the reasons for her discharge were pretextual.

In recent decisions our courts have made the burden which would be faced by Dr. Faltas a very heavy one. Under the current case law even if an employer did not tell the employee the correct reason for his termination, if the employee cannot prove that the actual reason for the termination was because of, in this case, religion and national origin, the employer's decision will not be overturned. It is not a violation of Title VII to discharge people for the reasons you dismissed her, or because they are obnoxious, or because they are litigious or because they do not comply with the internal rules or regulations; Title VII precludes only specific discrimination. I honestly do not think that Marie Faltas could prevail on a Title VII charge; however, even if she were to prevail, she would not have available to her any remedy which required that any of you or others be disciplined or in any way reprimanded. Her relief would be that limited by statute.

2. Additional sustaining grounds for the dismissal decision.

Notwithstanding the actual reasons for her dismissal initially, the current case law is such that if one finds an omission which rises to the level of a misrepresentation, as is the case in Faltas' application for admission to the Residency Program; that alone is grounds for termination notwithstanding any Title VII charges.

Additionally, you may have another ground to uphold dismissal. I am not completely aware of Dr. Faltas' immigration status but the newspapers indicate she is involved in deportation proceedings. If she does not have the appropriate Visa, I believe that the University is precluded from offering her a position. If she is in the process of being deported or undergoing deportation hearings, that indicates to me that her immigration status is so irregular that it would be illegal for the University to hire her.

Dr. Faltas should be well aware of this because she was involved in a lawsuit where her illegal immigration status allowed John Umstead Hospital to divest itself of her. In that situation she did not possess the type of waiver that she still apparently lacks, according to the newspaper articles.

3. Other causes of action or likely action by Dr. Faltas. Even though I am convinced that she could not prevail on her Title VII case, after looking through the myriad of lawsuits that she has filed over the years, I believe she would and will sue a number of individuals for slander, defamation, wrongful discharge, breach of contract, outrage, invasion of privacy and any other cause of action which comes to her mind.

While I believe that you would prevail in any suit, there is the problem that either you or the University may have to go through an actual trial on the other matters or at least proceed through the Summary Judgment Motion (short of trial). She may well file suit even after reaching an agreement with USC as she did with another university. I believe that a Title VII suit would end at the summary judgment level which would avoid a trial, but she may attempt to bring a breach of contract action on the grounds that one of the documents asking her to join the Residency Program could initially have been construed to limit the reasons for which her employment could have been terminated. It is my view that the language in the document is broad enough to allow you to make your decision to terminate her on the basis of your school policies and procedures. I also believe on the basis of her prior lawsuits, that a jury will have a tough time believing Dr. Faltas' allegations that her dismissal was unrelated to her conduct.

As I said earlier, I believe currently there is no outstanding offer to reinstate her because she did not accept your offer, but instead gave you a counter proposal.I would, however, suggest that you talk to the University about whether it wishes in writing to withdraw its offer to her so she cannot abandon her latest demands and accept the prior offer.

It is clear to me that Dr. Faltas will be a difficult individual throughout your association with her.To say she is litigious is an understatement. It does appear to me that she has brought one or more lawsuits against every place at which she was employed or a student and individual suits against any person with whom she disagrees.

I look forward to hearing from you in the near future.

Very truly yours,

s/Victoria L. Eslinger

VLE/wkt

cc: Walter H. Parham

THE UNIVERSITY OF SOUTH CAROLINA

Office of the Dean November 8, 1993
School of Medicine
PERSONAL AND CONFIDENTIAL

Columbia, SC 29208
803 733 3200
FAX 803 733-3335

Marie A. Faltas, MD
500 Gills Creek Parkway, 2002
Columbia, SC 29209

Dear Dr. Faltas:

On September 23, 1993, the School of Medicine offered you the opportunity to be reinstated into the Preventive Medicine Residency Program. In response, on September 29, 1993 through your attorney you rejected the Medical School's offer of reinstatement and proposed a counteroffer in which you demanded several terms and conditions be met before you would accept reinstatement into the program.

This is to advise you that the counteroffer proposed by you through your attorney to the Medical School's offer to reinstate you to the Residency Program is hereby rejected. Inasmuch as you rejected the offer of reinstatement, that offer is hereby revoked. Your status as a resident is terminated effective as of the date of this letter.

Yours sincerely,
s/J. O'Neal Humphries, MD Dean

C: President John M. Palms
Dr. James C. Moeser, Provost
Dr. David L. Keisler, Acting Chair
Department of Family and Preventive Medicine
Preventive Medicine Faculty
Walter H. Parham, General Counsel
Clifford Scott, Associate General Counsel
James Merritt, Esquire,
1200 Main Street, 8th Floor, Columbia, SC 29211-1645

APPOINTMENTS

Bobby Gist, appointed executive assistant lo the president for equal opportunity programs. Gist replaces Cliff Scott, former associate general counsel for the University who has served as interim equal opportunity officer since June. Gist joined the staff of the state Human Affairs Commission in 1972 and served as deputy commissioner since 1978. In his new role at USC, he will be responsible for increasing awareness about equal opportunity efforts, ensuring compliance with the Americans with Disabilities Act and administering the University's sexual harassment policy. Gist received his bachelor's degree from Benedict College and a master's degree in criminal justice from USC in 1977.

PLAINTIFF'S EXHIBIT #3 WAS MARKED FOR IDENTIFICATION.

Q Are you the Ed Turbeville who was copied with those letters?
A Yes.
Q Do you recall having received your copy of those letters?
A Yes.
Q Why would you have received such copies?
A Pardon?
Q Why would you have been copied with those letters?
A Because we hired the Nexsen, Pruet firm to defend this lawsuit -- or these lawsuits, I guess you would say, both.
Q When you say both, what do you mean?
A Well, there are two individual suits, two numbers.
Q You may look at the letters again. Do they refer to two individual suits?
A Well, not this one. This is the first claim we received, and the distinction being because I.N.S. was involved in it.
Q So in January, when you were copied with these two letters, Plaintiff's Deposition Exhibits 2 and 3, how many lawsuits were pending by me against any of your insureds?
A At that time it was just this action here, I think. The other action was later filed.
Q All right.
A Okay.
Q Who made the decision to hire Nexsen, Pruet for this action?
A I did.
Q As we sit here, do you have knowledge as to how you based that?
A To how I based it?
Q Yes.
A Well, we had -- we have an unusual scheme. The Attorney General has--- Do I need to go into that?
MR. BREWER: Go ahead.
MR. BRIGGS: Just so he knows, we're aware of the list.
A Okay.
MR. BRIGGS: We've seen the list.
A Okay.
MR. BREWER: What she's asking you is how did you come to hire Nexsen, Pruet in that case. Just answer that question.
A Okay. Well, I knew that -- I communicated with Mr. Parham, the University's legal counsel. Matter of fact, he sent the claim to me. I communicated with him, and I knew through my conversation with him that this firm was already involved to some degree in this litigation. Well, not in litigation but with Dr. Altekruse, one of the parties one of the defendants. My contention as a claims manager is why reinvent the wheel. This is a firm we use quite a bit. We use them on a rotational basis, but we do use them.

And from a cost standpoint, if we have an attorney who is already involved in litigation and there's no conflict, then from the standpoint of even as a taxpayer myself, why hire another separate firm who has to go in and learn all the new facts? So that was the basis for that, if it makes any sense.

Q It does make sense. However, you need to tell me what was Ms. Eslinger's involvement prior to January of '94.

A What was her involvement?

Q Yes.

A Well. I do know that she had been involved. The extent, I don't know. I didn't get into that with Mr. Parham. I do know that she had done some other things for them. What, I don't know. But then she had been involved apparently with some representation of Dr. Altekruse. I don't know. I didn't get into the extent of that. But she had familiarity with the facts in the case.

Q So she was involved with Dr. Altekruse and with the University before the I.N.S. case was filed.

A That was my understanding. I'm not – I am not certain.

Q Did you at the time question what involvement she would have had if there was no lawsuit?

A No. I normally — If I may interject, I normally use one of Mr. Brewer's partners, Susie McWilliams. She does a lot of work for the Insurance Reserve Fund, and that was my normal routing channel. Even when I assigned the case, as I recall, I assigned it to Susie.

Q I'm sorry. This may not be what you're trying to tell me, but I understand that to mean that whenever you get a case you assign it to Susie McWilliams. Is that what you're telling me?

A She's a member of that firm. We have a contact in law firms. Sometimes Mr. Brewer is not available. Susie is my next contact.

Q So Susie is your first contact in the Nexsen, Pruet law firm?

A Yes.

Q And then the Nexsen, Pruet law firm is the firm you would give -- to which you would give every case that gets assigned to you?

A Wait a minute, now. Repeat it again. I'm sorry.

Q It may not be what you meant to say, but this is the understanding that I'm getting, and, of course, you're free to correct it. The Nexsen, Pruet law firm is the law firm to which you assign every case you get?

A No. No, no, no. Not every case I get no.

Q Most cases you get?

A No.

Q What percentage of the cases you get you assign to them?

A Of the cases I personally work, I think this is the only suit they're involved in for me.